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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

GUY GENTILE, Plaintiff and Respondent, v. MARC COHODES, Defendant and Appellant.	A161721 (Sonoma County Super. Ct. No. SCV265069)

Appellant Marc Cohodes, a defendant who prevailed on a complex anti-SLAPP motion in a defamation action brought against him, appeals from the trial court's order awarding him attorney fees. The sole question is whether the trial court abused its discretion by reducing the hourly rates charged by the attorneys he retained to defend him.

Cohodes asserts two errors in this regard. He argues the court should have calculated the lodestar based on hourly rates charged by comparable law firms practicing in the San Francisco Bay Area, rather than in Sonoma County where the case was brought. He also argues that even if it was appropriate to utilize Sonoma County rates, the fee award should be vacated "with instructions to enter an award based on the prevailing rate for similar work [in that county]—complex civil litigation of issues such as defamation and federal securities fraud," because the lodestar utilized by the trial court was not based on similar work.

We reject both contentions and affirm. The trial court had discretion to determine that the relevant geographic market for assessing a reasonable hourly rate was the county in which the court sits. And because Cohodes did not introduce any evidence of the prevailing market rate *in Sonoma County* for comparable kinds of legal work, he cannot now complain that the trial court took it upon itself to ascertain a reasonable hourly rate for such services based principally upon the trial court's own expertise and familiarity with the local legal market.

BACKGROUND

Guy Gentile, a major shareholder of a publicly traded company, brought suit in Sonoma County Superior Court against Marc Cohodes, another investor who held a short position in the company' stock, alleging Cohodes made numerous defamatory statements about him on Twitter and other social media platforms in an effort to artificially depress the stock's price and claiming $25 million dollars in damages. Cohodes retained a team of experienced, high-caliber litigators from an Oakland, California-based law firm to defend him, and prevailed on an anti-SLAPP motion. He then filed a motion to recover $314,115 in attorney fees (plus costs), pursuant to statute (see Code Civ. Proc., § 425.16, subd. (c)).

In his opening papers on the attorney fee motion, Cohodes argued that the hourly rates charged by his legal team were reasonable based on hourly rates charged by "other reputable firms in the San Francisco Bay Area specializing in complex litigation," and argued that the court should not base the fee award on local rates prevailing in Sonoma County. Alternatively, he argued that "even judged by a purely local Sonoma County standard," its requested fees were reasonable.

In support, Cohodes filed a declaration of its lead counsel, Fred Norton, describing the complexity of the case and the credentials of his legal team. The hourly billing rates ranged from a low of $250 for two paralegals to a high of $750 for three of the lawyers involved (and $550 for two other lawyers). Norton opined that these rates are consistent with hourly rates "regularly charged by attorneys in Northern California with comparable experience" in complex commercial litigation. Cohodes also submitted evidence of pleadings in which the law firm representing Gentile in this case (Pillsbury Winthrop Shaw Pittman LLP), claimed similar hourly rates in fee motions filed in two unrelated federal district court cases (one pending in Arkansas, and the other in the Central District of California).

In opposition to the motion, Gentile objected to the hourly rates as excessive, and contended that the lodestar must be calculated based upon the local rates prevailing in Sonoma County. Gentile asked the court to reduce the top rates claimed by Cohodes's attorneys to no more than $300 per hour (and to make a similar adjustment for associates and paralegals). In support of his position, he introduced evidence of two other state court cases from Sonoma County in which trial judges had reduced the hourly rates sought by fee claimants as excessive for the local market and determined that a reasonable hourly rate for attorneys practicing in Sonoma County was, in one case, $300 and, in the other case, no more than $400 per hour.

In his reply papers, Cohodes doubled down. He again argued his lawyers' claimed billing rates were reasonable, that the relevant legal market was the San Francisco Bay Area "and that the comparable work is complex litigation involving white-collar criminal defense and sophisticated stock frauds." He also argued that hiring local counsel in Sonoma County was not practicable, as evidenced by the fact that both sides chose to retain attorneys

from outside Sonoma County. Alternatively, he argued that if the court utilized Sonoma County billing rates, then the court should award him the full amount of his requested fees as an upward adjustment to the lodestar.

Cohodes did not submit any evidence with his reply papers disputing Gentile's evidentiary showing that local Sonoma County billing rates are considerably lower than the rates charged by his out-of-town counsel. Nor did he move to strike or otherwise object to Gentile's evidence on that subject. (He simply argued that the evidence could not be considered, because it consisted of unpublished appellate opinions which cannot be cited as legal precedent under California Rules of Court, rule 8.1115.)

In a thoughtful and thorough ten-page written ruling supported by ample citation to caselaw, the trial court exercised its discretion to reduce both the number of hours claimed by Cohodes's attorneys and their claimed hourly billing rates. As relevant here, the court rejected Cohodes's argument that it was impracticable to retain local counsel ("there is no evidence in the record to support that assertion") and made a finding that, "with the qualifications and experience set forth in the Norton Declaration, fees in line with similarly qualified attorneys in the local, Sonoma County, community are $450 for partners, $330 for senior associates, and $150 for paralegals. This results in an across-the-board reduction of 40% in the billing rates of all billers." The court said these figures represented "the high end of the local rates." "Although at oral argument Defendant pointed out that there is no case which requires the Court to define the local community by county line, the Court concludes that the relevant community in this case is Sonoma County, and does not include the major metropolitan areas of San Francisco and Oakland." It also observed that Cohodes "chose to retain a lawyer from outside the community; that is his right, but it does not make the fees

incurred 'reasonable' for purposes of the fee award." The court also found there was no basis to apply a positive multiplier to the lodestar. Among other reasons, it explained that counsel's skill and the difficulty of the issues involved were already factored into the lodestar. The court awarded Cohodes $125,881.80 in attorney fees (plus costs), and this timely appeal followed.

DISCUSSION

The standard for calculating attorney fee awards under California law is well-settled. It "ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. . . . The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM Group*).) In calculating the lodestar, "The reasonable hourly rate is that prevailing in the community for similar work." (*Ibid.*)

We review the court's ruling for an abuse of discretion. "[T]he trial court has broad authority to determine the amount of a reasonable fee." (*PLCM Group*, *supra*, 22 Cal.4th at p. 1095.) "The determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court. [Citation.] The experienced trial judge is the best judge of the value of professional services rendered in his or her court. [Citation.] Accordingly, the trial court's ruling will not be disturbed unless the appellate court is convinced that it is wrong. [Citation.] In other words, the trial court's exercise of discretion will be reversed only if its decision 'exceeded the bounds

of reason,' i.e., it was arbitrary, capricious, or patently absurd." (*Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1240 (*Rey*).)

Cohodes argues the trial court was legally precluded from calculating the lodestar based on local hourly rates prevailing in Sonoma County. In other words, that the court had no discretion whatsoever to award attorney fees based upon reasonable hourly rates prevailing in the county in which the court sits.

That is not the law. In setting the lodestar, "[t]he general rule is '[t]he relevant "community" is that *where the court is located*,' " unless the party claiming fees demonstrates that hiring local counsel was impracticable or local counsel was not available. (*Marshall v. Webster* (2020) 54 Cal.App.5th 275, 285-286, italics added; accord, *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138 (*Ketchum*) ["the unadorned lodestar reflects the general local hourly rate for a fee-bearing case," italics omitted]; *Nishiki v. Danko Meredith, APC* (2018) 25 Cal.App.5th 883, 898 [" 'The rates of comparable attorneys in the forum district are usually used' "]; *Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 72 (*Altavion*) ["fee awards generally should be based on reasonable local hourly rates"]; see also *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 398-399 [different rule where plaintiff demonstrated inability to hire local counsel]; *Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 618-619 [same].) Hence, it is entirely appropriate to use county-based billing rates as the starting point for calculating a reasonable fee, and Cohodes cites no contrary authority. (See *Altavion*, at pp. 71-73 [no abuse of discretion to calculate lodestar based on local rates prevailing in San Mateo County rather than rates where counsel's home office is located, in Sacramento]; *Cordero-Sacks v. Housing Authority of*

City of Los Angeles (2011) 200 Cal.App.4th 1267, 1286 (*Cordero-Sacks*) [evidence of statewide average billing rates in California is "of little, if any relevance, and in any case cannot supplant the trial court's expertise" concerning appropriate hourly rate, because such evidence "did not focus on Los Angeles County, where this litigation arose and this case was tried"]; *Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1237-1238, 1241-1245 (*Nichols*) [error to utilize higher out-of-town billing rates rather than local Kern County billing rates without consideration of factors relevant to applying a discretionary multiplier where there was no showing local attorneys were unavailable]; see also *Rey*, *supra*, 203 Cal.App.4th at p. 1241 [no abuse of discretion to reduce hourly rates requested by "out-of-town attorneys from a higher fee area" from over $700 per hour to a blended local rate of $325, where trial court concluded the requested rates were excessive].)

"[U]se of reasonable rates in the local community, as an integral part of the initial lodestar equation, is one of the means of providing some objectivity to the process of determining reasonable attorney fees. Such objectivity is ' "vital to the prestige of the bar and the courts." ' [Citations.]" (*Nichols, supra,* 155 Cal.App.4th at p. 1243.) The court's decision to utilize reasonable billing rates prevailing in the county in which the court sits, rather than rates prevailing in a much larger region encompassing multiple counties, was well within its discretion and did not constitute legal error.[1]

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[1] Cohodes does not challenge the court's *factual* findings as to the reasonable hourly rates for attorneys of similar experience practicing in Sonoma County. The court's determination was grounded both in the evidence (submitted by Gentile) and its own practical experience, which was appropriate. (See *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009 (*Heritage Pacific Financial*) ["The court may rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate"]; accord, *569 East County Boulevard LLC v.*

Despite the foregoing authorities, Cohodes contends "there is no case holding that the relevant community, for establishing a reasonable rate, stops at the county line," and that "[i]n fact," Supreme Court authority (*Ketchum, supra,* 24 Cal.4th 1122; *PLCM Group, supra,* 22 Cal.4th 1084) as well as two decisions by this court (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691 (*Syers*); *Heritage Pacific Financial, supra,* 215 Cal.App.4th 972) "clearly establish that such an arbitrary line does not exist."

Cohodes misapprehends the issue. The question before us is not whether the court was *required* to determine that the relevant geographic legal market was Sonoma County. The question is whether it had discretion to do so. And Cohodes has not demonstrated it did not. Moreover, the only thing "clear" from the cited authorities is that Cohodes misreads them.

Ketchum, *supra,* 24 Cal.4th 1122, did not, as Cohodes says, "expressly approve[] of reliance on 'Bay Area' rates generally to establish a reasonable fee in Marin County." In the portion that Cohodes cites, the Supreme Court held the trial court did not fail to undertake an independent assessment of the evidence submitted in connection with an attorney fee motion. (*Id*. at p. 1140.) In that context, the Supreme Court explained the Marin Superior Court had "reviewed extensive documentation concerning the amount of the fees," which included (among other materials) "declarations by Bay Area attorneys concerning the prevailing rates for contingency fee cases." (*Ibid*.)

Backcountry Against the Dump, Inc. (2016) 6 Cal.App.5th 426, 437 (*569 East County Boulevard*).) Indeed, the court adopted hourly rates higher than the $300 maximum urged by Gentile which, far from constituting legal error, reflects a careful exercise of the court's discretion on this question.

The geographic boundaries of the legal market used to calculate the lodestar was neither specified nor at issue in *Ketchum*.

Nor does *PLCM Group* provide any support for the proposition that a trial court has no discretion to set a lodestar figure based on billing rates prevailing in the county in which the court sits. *PLCM Group* did not "hold," as Cohodes says, that the trial court "properly determined the reasonable rate by reference to 'the prevailing market rate for comparable legal services in San Francisco, where counsel is located' " rather than in Los Angeles County where the case was litigated. "The issue in *PLCM Group* was whether the trial court was required to 'determine reasonable attorney fees based on actual costs and overhead' (*PLCM Group, supra*, 22 Cal.4th at p 1098); the court did not address whether the relevant community for determining reasonable hourly rates is generally that where the court is located or where counsel's office is located. The decision is not authority for an issue it did not consider." (*Altavion, supra,* 226 Cal.App.4th at p. 72, fn. 33.)

Cohodes similarly misconstrues our decisions in *Syers* and *Heritage Pacific Financial*. Although in both cases this court affirmed fee awards that were based on evidence of billing rates charged in the "San Francisco Bay Area" and also noted that the fee awards were supported by the evidence, in neither case was the geographic boundary of the legal market at issue. (See *Syers*, *supra,* 226 Cal.App.4th at pp. 700-703 [rejecting arguments that court abused discretion in setting lodestar by adopting hourly rates that exceeded actual rates billed to insurance carrier, and by defining the relevant legal market more broadly than simply insurance defense work]; *Heritage Pacific Financial, supra,* 215 Cal.App.4th at pp. 1009-1010 [rejecting argument that court abused its discretion by relying on evidence concerning billing rates

charged for non-similar work that was more complex].) Indeed, far from supporting reversal, our decision in *Syers* demonstrates why we must affirm. In that case, we upheld a trial court's assessment of what constituted "similar work" for purposes of calculating a reasonable hourly market rate, and in so doing emphasized that the court's determination of the relevant legal "market" "lie[s] within [its] broad discretion." (*Id.* at pp. 702-703.) That is certainly no less true of a court's determination of the relevant geographic market.

Cohodes also cites an unpublished federal district court opinion involving class action litigation removed to federal court in the Northern District of California that determined, for purposes of evaluating the billing rates claimed in an uncontested attorney fees motion, that the relevant community was the San Francisco Bay Area. (*Ruch v. AM Retail Group, Inc.* (N.D. Cal., Sept. 28, 2016, No. 14-CV-05352-MEJ) [2016 WL 5462451, at p. *10].) But *Ruch* just proves the point. Unlike state trial courts, the federal Northern District of California encompasses multiple counties (see 28 U.S.C. § 84(a)), and so *Ruch* simply applied the rule, equally applicable in federal court, that " 'when determining a reasonable hourly rate, the relevant community is the forum in which the district court sits.' " (*Ibid.*, quoting *Camacho v. Bridgeport Financial, Inc.* (9th Cir. 2008) 523 F.3d 973, 979; see also *Camacho*, at p. 979 [holding that relevant community for purposes of assessing reasonable hourly rate for litigation pending in Northern District of California is the Northern District].)

We recognize that, particularly in major metropolitan areas such as the San Francisco Bay Area that embrace multiple counties, lawyers from large national or international law firms (or, as in this case, lawyers with such backgrounds), often cross county lines to appear in the courts of this state to

represent their clients' interests, much as they often travel to locales around the country, and indeed the world, to do so in distant forums. But that practical reality does not dictate a departure from the ordinary rule that the relevant geographic market for determining a reasonable hourly billing rate is the location where the court sits. Indeed, "[t]he lodestar adjustment method of calculating attorney fees . . . is designed expressly for the purposes of maintaining objectivity." (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 324; see also *Nichols, supra,* 155 Cal.App.4th at p. 1243.) Drawing the line at the county level provides an objective measure of reasonableness, in keeping with this goal. By contrast, accepting Cohodes's invitation to hold as a matter of law here that the "San Francisco Bay Area" (however defined) is the relevant geographic market simply because Sonoma County is commonly understood for some purposes to be part of the Bay Area (and because both sides hired lawyers from outside of Sonoma County), would require us to adopt a legal rule that lacks any objective parameters; however the "San Francisco Bay Area" region may be defined or commonly understood, it is neither a distinct political subdivision nor a judicial district.

For all of these reasons, we conclude the trial court did not abuse its discretion in adopting a lodestar based on attorney billing rates prevailing in Sonoma County rather than in the Greater San Francisco Bay Area region.

Our conclusion on this point fully disposes of Cohodes's second claim of error as well: that the trial court "fail[ed] to conduct any analysis, or make any findings, about the rates charged in the relevant community for 'similar work.' " Here, Cohodes faults the court for properly recognizing the complexity of the case yet reducing the compensable billing rates with "no analysis" of the billing rates for comparable professional legal services, which Cohodes contends entails "complex issues of defamation and federal

securities law." He argues that because the fee award was not based on rates for similar work, it must be vacated and the matter remanded.

Cohodes has it backwards. The trial court was not required to adduce any evidence; Cohodes was. He was the party moving for an award of attorney fees and, as such, bore the burden of demonstrating that the amount of fees he requested was reasonable. (*Mikhaeilpoor v. BMW of North America, LLC* (2020) 48 Cal.App.5th 240, 247; accord, *Center for Biological Diversity v. County of San Bernardino*, *supra,* 188 Cal.App.4th at p. 615.) "[I]f the prevailing party fails to meet this burden, and the court finds the . . . amount charged is not reasonable under the circumstances, 'then the court must take this into account and award attorney fees in a lesser amount.' " (*Mikhaeilpoor*, at p. 247.)

That is what the court did here. Cohodes concededly introduced no evidence of rates specific to Sonoma County (for *any* kind of legal work, comparable or not), which left the trial court with no choice but to fashion an award based on the evidence submitted by Gentile concerning Sonoma County rates and the court's own familiarity with local billing rates for comparable legal work. (See *PLCM Group*, *supra*, 22 Cal.4th at p. 1096 [" 'The value of legal services performed in a case is a matter in which the trial court has its own expertise. [Citation.] The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony' "].) Evidence of billing rates charged *outside* the relevant geographic market for legal work that Cohodes characterizes as comparable was "of little, if any relevance, and in any case cannot supplant the trial court's expertise." (*Cordero-Sacks, supra,* 200 Cal.App.4th at p. 1286.)

Graciano v. Robinson Ford Sales, Inc. (2006) 144 Cal.App.4th 140, cited by Cohodes, is not to the contrary. In that case, the trial court ignored unrebutted evidence that the claimed hourly rates were within the range charged by attorneys engaging in similar areas of practice, *and also were appropriate and reasonable for the city where the litigation took place* (El Centro, California, located in Imperial County), as well as opposing counsel's concession he was not challenging the claimed hourly rates. The court reduced the claimed hourly rates to $250 based solely on a local rule of court capping the hourly fees for expert witnesses. (See *id.* at p. 155.) *Graciano* held the court abused its discretion because the fee claimant's unrebutted evidence "compelled a finding that the requested hourly rates were within the reasonable rates for purposes of setting the base lodestar amount." (*Id.* at p. 156.) In dicta, the court observed that "there is no indication that in ascertaining the reasonable hourly rate, the [trial] court engaged in the relevant objective analysis: to determine the prevailing rate in the community for *comparable* professional legal services, that is, services rendered by counsel on consumer fraud issues. [Citations.] Rather, the court arbitrarily relied upon what it considered to be a reasonable rate for generic expert attorney testimony fixed by Imperial County Superior Court local rule 3.12." (*Ibid.*)

Unlike in *Graciano*, Cohodes did not introduce evidence that his attorneys' claimed billing rates were reasonable and appropriate for the relevant geographic market. Nor did the trial court act arbitrarily: in the absence of proof concerning local billing rates, the court relied on its own independent judgment and expertise, which as explained was entirely appropriate. (See also *569 East County Boulevard, supra,* 6 Cal.App.5th at p. 436, fn. 11 [distinguishing *Graciano*].)

To be clear, we do not mean to suggest that a proper showing could not be made in an appropriate case to justify the use of hourly billing rates charged by lawyers practicing at top-tier law firms, when they litigate in counties that are near to (or even some distance from) the county where their home office is located. Such practices are a reality of our legal profession and a routine feature of modern law practice, particularly with the increasing prevalence of digital dockets and the ever-expanding availability of remote appearances. A proper showing might be made, for example, that hiring local counsel was impracticable (see, e.g., *In re Tobacco Cases 1* (2013) 216 Cal.App.4th 570, 582-583). Or, a law firm that appears regularly in the courts of a distant county might be able to show that its lawyers and/or other attorneys with similar billing rates appear so frequently in such a court that the billing rates *they* command to do so should be considered in determining the prevailing rate for comparable legal services *for that county*. But no such evidence was before the trial court in this case.

We simply hold that, on this record, the trial court did not abuse its discretion in concluding that the relevant geographic market for assessing a reasonable attorney fee award was the county in which this case was litigated. Like many courts before us, "we conclude the trial judge was ' " 'the best judge of the value of professional services rendered in his court' " ' [citation] and we affirm his determination because we are not ' " 'convinced that it is clearly wrong.' " ' " (*569 East County Boulevard*, *supra,* 6 Cal.App.5th at pp. 439-440.)

DISPOSITION

The order awarding attorney fees is affirmed. Respondent shall recover his costs on appeal.

STEWART, J.

We concur.

KLINE, P.J.

RICHMAN, J.

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